IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH JAIPUR

J U D G M E N T

Madan Lal V/S Amar Singh

S.B.Civil First Appeal No.131/89
against the judgment and decree
dated 18.7.1989 passed by Shri
Nemi Chand Garg, Addl. District
Judge, Kishangarh-bas, district
Alwar in Civil Suit No. 38/86.

Date of Judgment ::: November 6, 2006

PRESENT

HON'BLE MR. JUSTICE KHEM CHAND SHARMA

Mr. R.K. Mathur for the appellant
Mr. Deepak Sharma on behalf of
Mr. R.N. Sharma for the respondent

BY THE COURT:

This appeal under Section 96 CPC arises out of the judgment and decree dated 18.7.1989 passed by the learned Additional District Judge, Kishangarh-bas, district Alwar whereby the learned Judge has dismissed the plaintiff's suit for specific performance, with costs.

Plaintiff filed a suit for specific performance of the contract with the averments that defendant agreed to sell his land bearing Khasra No. 160 measuring 2

bighas 2 biswas and Khasra No. 169 measuring 2 bighas and 4 biswas, situated in village Saran-bas, Tehsil Kishangarh-bas to the plaintiff on 3.6.80 for a consideration of Rs. 25,000/- and having received a sum of Rs. 22,000/- as against the sale consideration, the defendant handed over physical possession of the land to the plaintiff and also executed an agreement in his favour. The plaintiff was required to pay remaining amount of Rs. 3000/- to the defendant at the time of registry. The plaintiff at several times offered Rs. 3000/- to the defendant and requested him to get the sale deed registered, but of no avail.

During pendency of suit, on dismisal of plaintiff's application for appointment of receiver on 28.8.87, the defendant forcibly took over possession of the disputed land. The plaintiff averred that he was/is always ready and willing to perform his part of the contract by paying the balance amount of Rs. 3000/-.

The plaintiff vide notice dated 19.2.1985 informed that defendant that he should reach the office of Deputy Registrar, Kishangarh-bas so as to get the sale deed registered in his favour after receiving the balance amount of Rs. 3000/-. The plaintiff stated that

he is ready to bear the entire expenses. The defendant refused to accept the notice. Ultimately, the plaintiff failed the suit on 4.5.1988.

The defendant contested the suit by filing written statement and denied the averments made in the plaint. The trial court, on the basis of pleadings of the parties, framed issues and at the conclusion of trial and on hearing the parties, dismissed the plaintiff's suit with costs.

I have heard learned counsel for the parties and gone through the impugned judgment and the record. Having gone through the judgment impugned in this appeal, it appears that the learned trial court has disbelieved the evidence adduced on behalf of the plaintiff and in my opinion, rightly so, inasmuch as while disbelieving the testimony of plaintiff's witnesses, the trial court has assigned cogent and sufficient reasons. Therefore, I do not consider it appropriate to make reappraisal of the plaintiff's evidence.

So far as merits of the case is concerned, the defendant executed an agreement to sell, Ex.1 in favour of plaintiff on 3.6.1980 in the presence of PW5

Vishambhar Dayal and PW6 Rajendra Kumar, according to which the defendant agreed to sell the land bearing Khasra Nos. 160 and 169. Both these witnesses have contradicted each other in respect of payment made by the plaintiff. PW5 Vishambhar Dayal has stated that payment was made in the village, while PW6 Rajendra Kumar states that amount was paid in his presence. Plaintiff Madan Lal (PW1) in his statement has stated that except the disputed land he did not purchase any land from defendant Amar Singh. He further stated that he did not get any notice served except the notice concerning this land. However, a glance at the record shows that defendant has produced on record a notice dated 17.11.1983 (Ex.A-1), which was got served by the plaintiff's Advocate Shri Jagdish Prasad. This notice indicates that defendant entered into an agreement with the plaintiff on 31.1.1979 in respect of land bearing Khasra Nos. 115 and 116. In the instant case the agreement in dispute is dated 3.6.1980. Had there been any agreement dated 3.6.1980, such agreement must have been referred in the notice dated 17.11.1983, Ex.A-1. Surprisingly enough, a period of more than 3 years from the date of execution of alleged agreement Ex.1 had

elapsed on the date of issue of notice Ex.A/1 but still reference of agreement dated 31.1.1979 is lacking in the notice dated 17.11.1983 Ex.A-1.

It is well settled that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract, the Court can infer that it is to be performed in a reasonable time. The persons who desire the assistance of a Court in obtaining equitable relief of specific performance must come to the court without undue delay. Here, in the instant case, undue delay on the part of plaintiff is obvious. Thus, the undue delay as stated above, if taken into consideration along with other circumstances of the case, this Court cannot exercise its discretion in granting relief of specific performance of contract in favour of the plaintiff.

Apart from above, it also need be observed that the agreement Ex.1 was alleged to be executed for a consideration of Rs. 25000/-, against which a sum of Rs. 22,000/- had already been paid by the plaintiff and therefore, it cannot at all be believed that sale deed could not be registered for such a long period for

want of such a meager amount i.e. Rs. 3000/-.

For the reasons aforesaid, the appeal being devoid of merit is liable to be dismissed and it is dismissed accordingly.

(Khem Chand Sharma), J.

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PS